

110TH CONGRESS
2D SESSION

H. R. 6133

To amend the Internal Revenue Code of 1986 to extend and modify the renewable energy production tax credit and the solar energy and fuel cell investment tax credit.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 2008

Mr. TERRY (for himself, Mr. BARTON of Texas, Mr. HALL of Texas, Mr. UPTON, Mr. DEAL of Georgia, Mr. WHITFIELD of Kentucky, Mr. SHIMKUS, Mrs. WILSON of New Mexico, Mr. SHADEGG, Mr. PICKERING, Mr. BUYER, Mr. RADANOVICH, Mr. PITTS, Mrs. BONO MACK, Mr. ROGERS of Michigan, Mrs. MYRICK, Mr. SULLIVAN, Mr. BURGESS, Mr. MCCRERY, Mr. ENGLISH of Pennsylvania, Mr. GALLEGLY, Mr. PEARCE, Mr. MCCAUL of Texas, Mr. KUHLMAN of New York, and Mr. ISSA) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to extend and modify the renewable energy production tax credit and the solar energy and fuel cell investment tax credit.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. EXTENSION AND MODIFICATION OF RENEW-**
4 **ABLE ENERGY PRODUCTION TAX CREDIT.**

5 (a) EXTENSION OF CREDIT.—Each of the following
6 provisions of section 45(d) (relating to qualified facilities)

1 is amended by striking “January 1, 2009” and inserting
2 “January 1, 2014”:

3 (1) Paragraph (1).

4 (2) Clauses (i) and (ii) of paragraph (2)(A).

5 (3) Clauses (i)(I) and (ii) of paragraph (3)(A).

6 (4) Paragraph (4).

7 (5) Paragraph (5).

8 (6) Paragraph (6).

9 (7) Paragraph (7).

10 (8) Paragraph (8).

11 (9) Subparagraphs (A) and (B) of paragraph
12 (9).

13 (b) PRODUCTION CREDIT FOR ELECTRICITY PRO-
14 DUCED FROM MARINE RENEWABLES.—

15 (1) IN GENERAL.—Paragraph (1) of section
16 45(c) (relating to resources) is amended by striking
17 “and” at the end of subparagraph (G), by striking
18 the period at the end of subparagraph (H) and in-
19 serting “, and”, and by adding at the end the fol-
20 lowing new subparagraph:

21 “(I) marine and hydrokinetic renewable en-
22 ergy.”.

23 (2) MARINE RENEWABLES.—Subsection (c) of
24 section 45 is amended by adding at the end the fol-
25 lowing new paragraph:

1 “(10) MARINE AND HYDROKINETIC RENEW-
2 ABLE ENERGY.—

3 “(A) IN GENERAL.—The term ‘marine and
4 hydrokinetic renewable energy’ means energy
5 derived from—

6 “(i) waves, tides, and currents in
7 oceans, estuaries, and tidal areas,

8 “(ii) free flowing water in rivers,
9 lakes, and streams,

10 “(iii) free flowing water in an irriga-
11 tion system, canal, or other man-made
12 channel, including projects that utilize non-
13 mechanical structures to accelerate the
14 flow of water for electric power production
15 purposes, or

16 “(iv) differentials in ocean tempera-
17 ture (ocean thermal energy conversion).

18 “(B) EXCEPTIONS.—Such term shall not
19 include any energy which is derived from any
20 source which utilizes a dam, diversionary struc-
21 ture (except as provided in subparagraph
22 (A)(iii)), or impoundment for electric power
23 production purposes.”.

1 (3) DEFINITION OF FACILITY.—Subsection (d)
 2 of section 45 is amended by adding at the end the
 3 following new paragraph:

4 “(11) MARINE AND HYDROKINETIC RENEW-
 5 ABLE ENERGY FACILITIES.—In the case of a facility
 6 producing electricity from marine and hydrokinetic
 7 renewable energy, the term ‘qualified facility’ means
 8 any facility owned by the taxpayer—

9 “(A) which has a nameplate capacity rat-
 10 ing of at least 150 kilowatts, and

11 “(B) which is originally placed in service
 12 on or after the date of the enactment of this
 13 paragraph and before January 1, 2010.”.

14 (4) CREDIT RATE.—Subparagraph (A) of sec-
 15 tion 45(b)(4) is amended by striking “or (9)” and
 16 inserting “(9), or (11)”.

17 (5) COORDINATION WITH SMALL IRRIGATION
 18 POWER.—Paragraph (5) of section 45(d), as amend-
 19 ed by subsection (a), is amended by striking “Janu-
 20 ary 1, 2013” and inserting “the date of the enact-
 21 ment of paragraph (11)”.

22 (c) SALES OF ELECTRICITY TO REGULATED PUBLIC
 23 UTILITIES TREATED AS SALES TO UNRELATED PER-
 24 SONS.—Section 45(e)(4) (relating to related persons) is
 25 amended by adding at the end the following new sentence:

1 “A taxpayer shall be treated as selling electricity to an
 2 unrelated person if such electricity is sold to a regulated
 3 public utility (as defined in section 7701(a)(33)).”.

4 (d) TRASH FACILITY CLARIFICATION.—Paragraph
 5 (7) of section 45(d) is amended—

6 (1) by striking “facility which burns” and in-
 7 serting “facility (other than a facility described in
 8 paragraph (6)) which uses”, and

9 (2) by striking “COMBUSTION” in the heading
 10 thereof.

11 (e) EFFECTIVE DATES.—

12 (1) EXTENSION.—The amendments made by
 13 subsection (a) shall apply to property originally
 14 placed in service after December 31, 2008.

15 (2) MODIFICATIONS.—The amendments made
 16 by subsections (b) and (c) shall apply to electricity
 17 produced and sold after the date of the enactment
 18 of this Act, in taxable years ending after such date.

19 (3) TRASH FACILITY CLARIFICATION.—The
 20 amendments made by subsection (d) shall apply to
 21 electricity produced and sold before, on, or after De-
 22 cember 31, 2007.

23 **SEC. 2. EXTENSION AND MODIFICATION OF SOLAR ENERGY**
 24 **AND FUEL CELL INVESTMENT TAX CREDIT.**

25 (a) EXTENSION OF CREDIT.—

1 (1) SOLAR ENERGY PROPERTY.—Paragraphs
 2 (2)(A)(i)(II) and (3)(A)(ii) of section 48(a) (relating
 3 to energy credit) are each amended by striking
 4 “January 1, 2009” and inserting “January 1,
 5 2018”.

6 (2) FUEL CELL PROPERTY.—Subparagraph (E)
 7 of section 48(c)(1) (relating to qualified fuel cell
 8 property) is amended by striking “December 31,
 9 2008” and inserting “December 31, 2017”.

10 (3) QUALIFIED MICROTURBINE PROPERTY.—
 11 Subparagraph (E) of section 48(c)(2) (relating to
 12 qualified microturbine property) is amended by
 13 striking “December 31, 2008” and inserting “De-
 14 cember 31, 2017”.

15 (b) ALLOWANCE OF ENERGY CREDIT AGAINST AL-
 16 TERNATIVE MINIMUM TAX.—Subparagraph (B) of section
 17 38(c)(4) (relating to specified credits) is amended by strik-
 18 ing “and” at the end of clause (iii), by striking the period
 19 at the end of clause (iv) and inserting “, and”, and by
 20 adding at the end the following new clause:

21 “(v) the credit determined under sec-
 22 tion 46 to the extent that such credit is at-
 23 tributable to the energy credit determined
 24 under section 48.”.

1 (c) REPEAL OF DOLLAR PER KILOWATT LIMITATION
2 FOR FUEL CELL PROPERTY.—

3 (1) IN GENERAL.—Section 48(c)(1) (relating to
4 qualified fuel cell), as amended by subsection (a)(2),
5 is amended by striking subparagraph (B) and by re-
6 designating subparagraphs (C), (D), and (E) as sub-
7 paragraphs (B), (C), and (D), respectively.

8 (2) CONFORMING AMENDMENT.—Section
9 48(a)(1) is amended by striking “paragraphs (1)(B)
10 and (2)(B) of subsection (c)” and inserting “sub-
11 section (c)(2)(B)”.

12 (d) PUBLIC ELECTRIC UTILITY PROPERTY TAKEN
13 INTO ACCOUNT.—

14 (1) IN GENERAL.—Paragraph (3) of section
15 48(a) is amended by striking the second sentence
16 thereof.

17 (2) CONFORMING AMENDMENTS.—

18 (A) Paragraph (1) of section 48(c), as
19 amended by this section, is amended by striking
20 subparagraph (C) and redesignating subpara-
21 graph (D) as subparagraph (C).

22 (B) Paragraph (2) of section 48(c), as
23 amended by subsection (a)(3), is amended by
24 striking subparagraph (D) and redesignating
25 subparagraph (E) as subparagraph (D).

1 (e) EFFECTIVE DATES.—

2 (1) EXTENSION.—The amendments made by
3 subsection (a) shall take effect on the date of the en-
4 actment of this Act.

5 (2) ALLOWANCE AGAINST ALTERNATIVE MIN-
6 IMUM TAX.—The amendments made by subsection
7 (b) shall apply to credits determined under section
8 46 of the Internal Revenue Code of 1986 in taxable
9 years beginning after the date of the enactment of
10 this Act and to carrybacks of such credits.

11 (3) FUEL CELL PROPERTY AND PUBLIC ELEC-
12 TRIC UTILITY PROPERTY.—The amendments made
13 by subsections (c) and (d) shall apply to periods
14 after the date of the enactment of this Act, in tax-
15 able years ending after such date, under rules simi-
16 lar to the rules of section 48(m) of the Internal Rev-
17 enue Code of 1986 (as in effect on the day before
18 the date of the enactment of the Revenue Reconcili-
19 ation Act of 1990).

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